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Attorneys for Plaintiff Novell, Inc.

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U.S. DISTRICT COURT

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DISTRICT OF UTAH MAY 27 2004

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UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

MAY 28 2004  
OFFICE OF  
JUDGE PAUL G. CASSELL

NOVELL, INC.,

Plaintiff,

v.

JOSEPH A. LACAYO CORP., *et al.*,

Defendants

Case No. 2:00-CV-646 PGC

**JUDGMENT AGAINST  
JOSEPH A. LACAYO**

Based upon the Amended Complaint, defendant's default, the pleadings, the declarations, and the other papers filed in this action, the Court finds and concludes as follows:

1. Plaintiff Novell, Inc. ("Novell") filed an Amended Complaint on February 11, 2004 (Docket # 94) asserting claims against defendant Joseph A. Lacayo, an individual ("Lacayo").
2. Novell's claims against Lacayo arise under the Copyright Act and amendments thereto, 17 U.S.C. §§ 501-1332 ("Copyright Act"), and the Trademark Act of 1946 and amendments thereto, 15 U.S.C. §§ 1051-1141n (the "Lanham Act"), and the laws of the State of Utah.

Entered on docket

71904 by:

Deputy Clerk

1142

3. Lacayo was properly served with the Amended Complaint and a summons but failed to answer or otherwise respond. This court has entered Lacayo's default (Docket # 127), and he has not been relieved of default. Lacayo is not in the military service, nor is he an infant or incompetent.

4. This court has jurisdiction over Lacayo and over the subject matter of this action pursuant to 15 U.S.C. Section 1121 and 28 U.S.C. Sections 1331 and 1338.

5. Novell has obtained United States Certificates of Copyright Registration for, and is the owner of the copyrights in, each version of its NetWare® computer networking software, including but not limited to IntranetWare for Small Business software, Registration Number TX 4-460-173, such copyrights being in full force and effect and owned by Novell.

6. Novell is the owner of the exclusive right to use certain trademarks in connection with its software distributed in interstate and foreign commerce. Some of the trademarks are registered with the U.S. Patent and Trademark Office. Two of the trademarks and their Registration Numbers are: NOVELL®, No. 1,338,892; and NETWARE®, No. 1,328,271.

7. Lacayo participated in and was a moving, active, conscious force behind various unauthorized distributions of stolen copies of Novell's copyrighted IntranetWare for Small Business software and the unauthorized use of Novell's Trademarks in connection with the sale, offering for sale, and distribution of products.

8. Lacayo willfully infringed Novell's copyrights and trademarks in violation of 17 U.S.C. Sections 501-504 and 15 U.S.C. Sections 1114, 1116, 1117, and 1125(a).

9. As a direct result of Lacayo's willful infringements of Novell's copyrights and trademarks, involving more than nine separate transactions and at least 340 units of stolen IntranetWare for Small Business software, Novell has suffered damages.

10. Novell should be awarded statutory damages of \$30,000 per infringing transaction under the Copyright Act for each of the nine separate transactions proven by Novell, for a total of \$270,000, plus reasonable attorney's fees "as part of the costs." 17 U.S.C. § 505.

Based on the foregoing findings and conclusions, as well as the pleadings, papers, and files herein, and good cause appearing, IT IS ORDERED, ADJUDGED, AND DECREED:

(1) That Novell, Inc. recover from Joseph A. Lacayo, an individual, damages in the amount of \$270,000.00, plus costs and reasonable attorneys' fees, as part of the costs, in the amount of \$1,198.50, for a total of \$271,198.50, plus any additional costs and attorney's fees that Novell reasonably incurs hereafter in collecting and enforcing this judgment;

(2) That the total amount of the judgment set forth in paragraph (1) above bear post-judgment interest at the rate provided by law until paid in full;

(3) That Joseph A. Lacayo, his agents, servants, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice hereof by personal service or otherwise, are permanently enjoined and restrained from: (a) selling or otherwise distributing copies of any Novell® software, including but not limited to IntranetWare for Small Business software; (b) using any of Novell's trademarks, including but not limited to Registered Trademark Nos. 1,338,892 (NOVELL) and 1,328,271 (NETWARE), or any similar marks, such as INTRANETWARE, in connection with the sale, offering for sale, or distribution of any products or services; (c) doing any business in NetWare products or any other Novell products; and/or (d) assisting, participating in, or otherwise facilitating any of the activities prohibited in subsections (a) through (c);

(4) That execution of this judgment issue forthwith;

(5) That this court retain jurisdiction to enforce the terms of this judgment;

(6) That all of Novell, Inc.'s other claims against defendant Joseph A. Lacayo not addressed in this judgment are hereby dismissed; and

(7) That, after entry of this judgment against defendant Joseph A. Lacayo and the judgment against defendant Joseph A. Lacayo Corporation, the court will have adjudicated all the claims and all of the rights and liabilities of all of the parties in this action.

DATED this 16th day of July, 2004.


BY THE COURT:



UNITED STATES DISTRICT JUDGE

RESPECTFULLY SUBMITTED:

PARR WADDOUPS BROWN  
GEE & LOVELESS, P.C.

 May 27, 2004  
Gregory M. Hess Date

Attorneys for Plaintiff Novell, Inc.

**CERTIFICATE OF SERVICE**

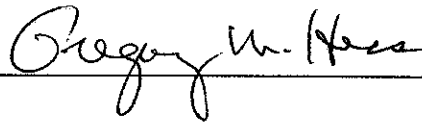
1. I am over the age of eighteen (18) years and not a party to the within action or proceeding. My business address is 185 South State Street, Suite 1300, Salt Lake City, Utah 84111, and I am employed by the law firm of Parr Waddoups Brown Gee & Loveless, PC.

2. On May 27, 2004, I caused a true and correct copy of the foregoing proposed **JUDGMENT AGAINST DEFENDANT JOSEPH A. LACAYO CORPORATION** to be served by U.S. mail, first-class postage prepaid, upon the following:

H. Dickson Burton  
TranskBritt  
Post Office Box 2550  
230 South 500 East, Suite 300  
Suite 300  
Salt Lake City, Utah 84110

David E. Newhouse, Esq.  
Newhouse & Associates  
Twin Oaks Office Plaza, Suite 112  
477 Ninth Ave  
San Mateo, CA 94402

Joseph A. Lacayo  
15405 Via Palomino  
Monte Sereno, CA 95030

  
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tsh

United States District Court  
for the  
District of Utah  
July 19, 2004

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:00-cv-00646

True and correct copies of the attached were either mailed, faxed or e-mailed  
by the clerk to the following:

Joseph Lacayo  
15405 VIA PALOMINO  
MONTE SERENO, CA 85030

Gregory M. Hess, Esq.  
PARR WADDOUPS BROWN GEE & LOVELESS  
185 S STATE ST STE 1300  
PO BOX 11019  
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